Chicagoland Television News, Inc. *and* American Federation of Television and Radio Artists (AFTRA), AFL–CIO, Petitioner. Case 13–RC–19844

April 30, 1999

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FOX, HURTGEN, AND BRAME

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 15, 1998, and the hearing officers' reports recommending disposition of them. The election in unit A was conducted pursuant to a Stipulated Election Agreement.[1] The tally of ballots shows 19 votes for and 24 against the Petitioner, with 5 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officers' findings[2] and recommendations as modified below, and finds that a certification of results of election should be issued.

In accord with the hearing officers' findings and recommendations, we overrule Petitioner's Objections 3, 4, 6, and 7.[3] Contrary to the hearing officer's recommendation regarding Objection 1, however, we overrule Petitioner's Objection 1 and certify the results of the election.

In Objection 1, the Petitioner asserts that the Employer held a 12-hour "party" on the day before the election, at which it provided free alcoholic and nonalcoholic beverages, food, and entertainment, and that employees were told to attend on worktime. The Petitioner further asserts that the Employer conducted a vote-no campaign during the party. The hearing officer found that the conduct was objectionable under the standard articulated by the Board in *B & D Plastics,* 302 NLRB 245 (1991), or, alternatively, under the standard of *Kalin Construction Co.,* 321 NLRB 649 (1986), and *General Shoe Corp.,* 77 NLRB 124 (1948). The hearing officer recommended that the Board sustain this objection and direct a second election. In its exceptions, the Employer contends that the party is unobjectionable under either legal standard. We find merit in the Employer's exceptions, for the reasons that follow.

To determine whether a preelection grant of benefits, like the party at issue in the instant case, would improperly tend to influence the outcome of an election, the Board examines a number of factors, including: (1) the size of the benefit conferred in relation to the stated purpose for granting it; (2) the number of employees receiving it; (3) how employees reasonably would view the purpose of the benefit; and (4) the timing of the benefit. *B & D Plastics, Inc.,* supra. This standard is an objective one. Id.

In formulating that test, the Board did not purport to overrule its long line of cases holding that "campaign parties, absent special circumstances, are legitimate campaign devices" and that it will not set aside an election simply because the union or employer provided free food and drink to the employees. *L. M. Berry & Co.,* 266 NLRB 47, 51 (1983), and cases there cited. Accord: *Douglas Parking Co.,* 262 NLRB 267, 272 (1982); *Food Mart,* 158 NLRB 1294, 1297 (1966), enfd. 386 F.2d 192 (1st Cir. 1967). Rather *B & D Plastics,* supra, and cases applying its test to social events given by unions or employers during an election campaign essentially define what "special circumstances" will warrant a finding that the event crossed the line and amounted to a benefit that would tend to undermine employee free choice in the election.

In this case, the Employer hosted a party, which began at around noon and ended around midnight on the day before the election. The Employer provided food and beverages and paid for bar games, including pool. The cost of the party, which was attended by about 85 people, was about $2200, an average cost of $26 per attendee.[4]

[1] On October 20, 1998, in an unpublished decision, the Board certified the Petitioner as the exclusive collective-bargaining representative of the Employer's employees in unit B (composed of engineering & operations department employees). Regarding the outcome of the election in unit A (a unit composed of news department employees), the Board overruled Petitioner's Objections 2, 5, and 8, but found that Petitioner's Objections 1, 3, 4, and 7 warranted a hearing. Accordingly, the Board issued a certification of representative in unit B and remanded the proceedings in unit A. Further, the Board held in abeyance its decision regarding Petitioner's Objection 6, which also concerned the election in unit A. A hearing already had been held regarding Objection 6, a hearing officer's report was issued on July 23, 1998, and exceptions and briefs were filed.

In fn. 3 of our previous decision in this case, the Board stated that it was overruling Petitioner's "Objections 2, *6*, and 8, for the reasons relied on by the Acting Regional Director." The statement should have read "Objections 2, *5*, and 8." We correct this error.

[2] The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.,* 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

[3] There were no exceptions as to Objection 7.

[4] Attendees at the party consisted of the Employer's managers and supervisors and employees in units A and B. As noted by the hearing officer, unit A consists of 45 employees. Although the record does not reveal precisely how many unit A employees attended the party, Employer President Barbara Weeks estimates the number at about 35. There is some evidence that the party continued after midnight. The evidence is inconclusive regarding whether the Employer continued to pick up the tab for postmidnight expenses.

We find that the party here is distinguishable from the brunch found objectionable in *Chicago Tribune,* 326 NLRB 1057 (1998). There, during the preelection period, the employer hosted a lavish party for 24 unit employees and their spouses, children, and guests, at a cost of $8000. The employer also provided gifts, valet parking, and a coat check for adult attendees, and babysitting service, entertainment, gifts, photographs with Santa Claus, and separate dining facilities for children. The party invitation informed employees that they would have an

The Employer had a history of hosting holiday parties, summer picnics, and awards dinners for employees, and of providing free meals for employees who were scheduled to work on holidays.

Employer President Barbara Weeks testified that the occasion for the party was "the end of the [Union] campaign" and the Employer's desire to have "an event that was by invitation that wasn't about the Union." The party invitation expressly stated "no electioneering;" and no speeches were given during the party.[5] Attendance at the party was voluntary.

We do not necessarily accept the Employer's apparent contention that the party was unrelated to the election. That is, we are not persuaded that there would have been a party even if there were no election. Indeed, even the Employer stated that the party marked the end of the election campaign. However, as noted supra, there have been other occasions for which the Employer gave parties. We also note that there were no campaign speeches at the party involved herein, and nonunit employees were invited to attend.

Contrary to the Petitioner's assertion in its objection, there is no evidence that the Employer "told employees to attend [the party] on work time." Weeks' testimony that the majority of the attendees went to the party at the end of their shifts is largely unchallenged.[6]

As noted above, it appears that about 35 of the 85 attendees at the party were unit A employees. As shown, the cost of the party was not excessive. The Employer's stated purpose for hosting the party was that it wanted to close out the election campaign period with an event that "wasn't about the Union." Its posted invitation made clear to employees the voluntary and social nature of the party: "Reception. Come when you can! No electioneering! Just food, drink and good company!" The Employer did not deliver a speech or message about the Union at the party. We find that the party could not reasonably have been viewed as a grant of a benefit to improperly influence the election. Accordingly, we find that the party did not interfere with the election *under B & D Plastics,* supra.

We also reject the hearing officer's alternative theory for finding the party objectionable, pursuant to the Board's decision in *Kalin Construction Co.,* 321 NLRB 649 (1986).

We find that *Kalin* is inapposite to the instant case. In *Kalin*, the Board established a strict rule against an employer's changing its paycheck process during the critical, 24-hour period before an election for the purpose of influencing employees' votes in the election. In establishing the rule, the Board "borrow[ed] from" *Peerless Plywood,* 107 NLRB 427 (1953), and *Milchem, Inc.,* 170 NLRB 362 (1968), and "the broader notion that certain kinds of last minute pressure to persuade . . . are disruptive of the election process, and should be curtailed in order to encourage employee free choice." *Kalin Construction Co.,* supra at 651–652 fn. 9. We have found here that there was no unlawful electioneering at the party, nor was there any "last minute pressure to persuade" employees in the exercise of their free choice regarding representation.[7]

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opportunity to ask the employer questions about the scheduled decertification election, and the employer delivered an antiunion speech during the party.

[5] The hearing officer has implicitly credited testimony regarding several instances in which the union election allegedly was discussed at the party. One incident involved an employee asking Employer President Weeks, "[W]hat was going to happen." Weeks replied, "I don't know, it depends on, we don't know yet." The second involved employee Mike Monseur. As Monseur was leaving the party, a manager told him to "hang in there, and that he felt bad for us." Monseur also testified that employees "were all joking that it took the Union to get the company to throw a party like this." In a third incident, an employee told Weeks that "we should have more union discussions and votes more often so we can have more parties like this." Weeks replied, "[A]ll you have to do is ask." These comments are ambiguous and innocuous. Further, we agree with the hearing officer that the comments are not indicative of a "vote-no" campaign. We also agree with the hearing officer that the party did not violate the Board's rule prohibiting election speeches on company time to massed assemblies of employees within the critical period before an election. See *Peerless Plywood Co.,* 107 NLRB 427, 429 (1953).

[6] There is some evidence that a few employees may have extended their normal lunch or dinner breaks to attend the party, in part, on worktime, perhaps with the Employer's tacit approval. Unit employees Dwight Casimere and Nadine Arroyo, both reporters, testified that they went to the party during their meal break and stayed longer than their normal break period while awaiting dispatch to an assignment, rather than return to the Employer's premises to wait. Both testified to the effect that it was not an unusual occurrence that reporters might have to wait for dispatch to assignments. Employee Greg Prather testified, without explanation, that he spent a longer-than-normal meal break at the party. Except for these isolated incidents, which we find de minimis, there is no evidence that any employee was in paid status while attending the party. Thus, we find the facts of this case distinguishable from those of *B & D Plastics,* supra. There, the employer granted employees an entire day off with pay, 2 days before the election, to enable their attendance at an employer-sponsored cookout for which the employer had no other purpose than to deliver the final message in its antiunion campaign. *River Parish Maintenance*, 325 NLRB 815 (1998), is also distinguishable. In that case, the Board found objectionable an employer's sponsorship of an offsite "crab boil" dinner. Employee attendance was mandatory, and employees were paid to attend for 1 hour of worktime and 1 hour of nonworktime. Member Hurtgen dissented in *River Parish,* supra, and would have found the "crab boil" unobjectionable.

[7] In finding that *Kalin Construction,*supra, is inapposite here, Members Hurtgen and Brame do not pass on the validity of the standard established in *Kalin*.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for American Federation of Television and Radio Artists (AFTRA), AFL–CIO, and that it is not the exclusive representative of the employees in bargaining unit A.